# BAR BULLETIN

PUBLISHED BY THE LOS ANGELES BAR ASSOCIATION

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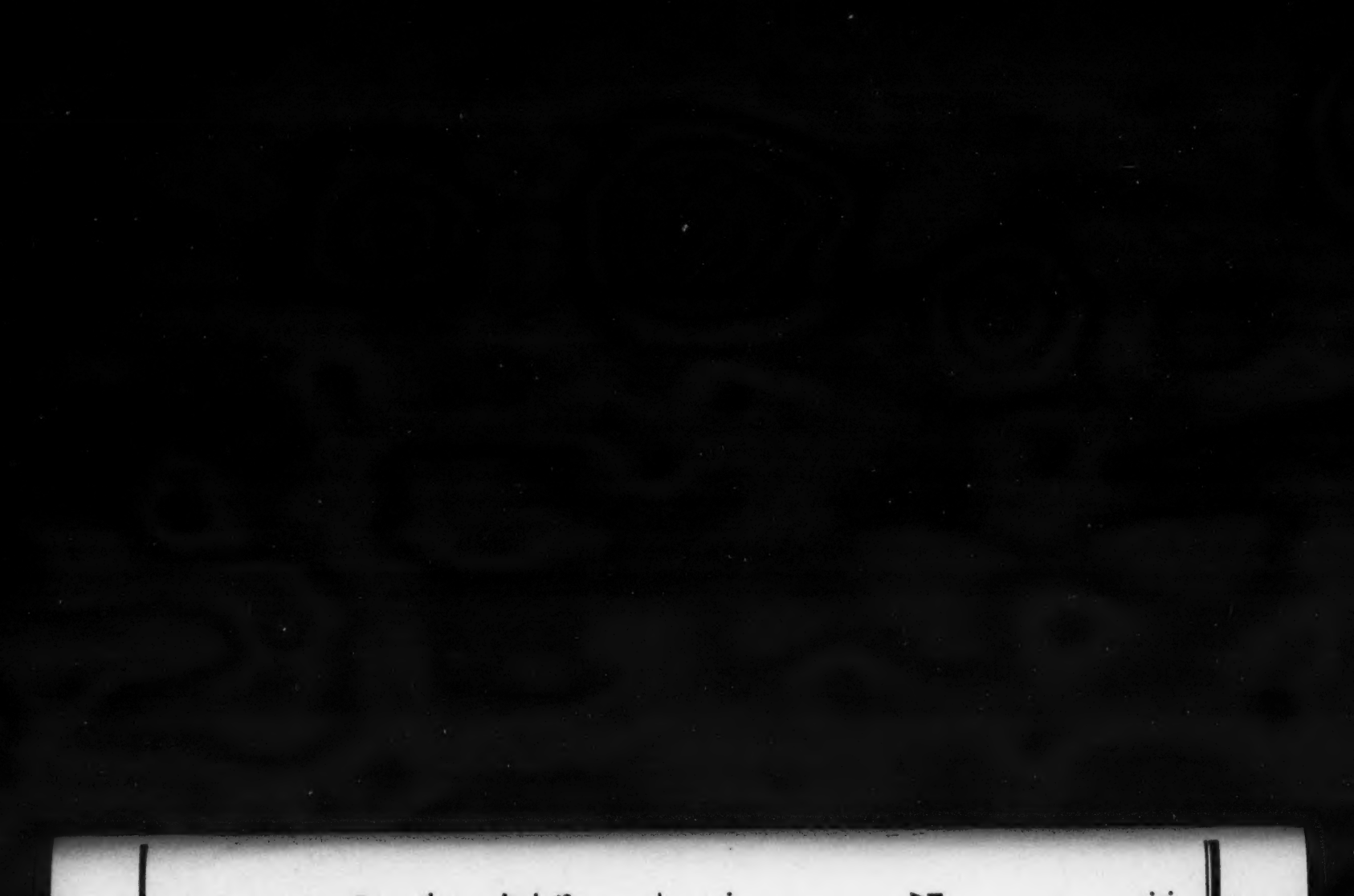

# BAR BULLETIN

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## THE NEW BULLETIN

This is the first issue of a remodeled *Bulletin.* The editors have modernized its physical appearance to keep pace with the new editorial policy. Hereafter the *Bulletin* will contain information concerning only topics of current and vital importance to the bar and the bench. Comment thereon may be pointed and critical. Views of the writers will not be softened in the hope of presenting material agreeable to every one. If you find any article or editorial comment to be expressive of a bias or opinion which you do not share, write an article for the *Bulletin,* and the contrary view will be given the same careful consideration for publication as the original article. You are invited to read the *Bulletin* regularly during the next few months.

## PARTY-BOSSED JUDGES

The Los Angeles County Central Committee of one of the major political parties, has recently appointed a sub-committee to ascertain whether or not it is feasible to obtain a slate of ten or twelve lawyers, registered as members of that party, to run for the office of judge of the Superior Court. The implication of the resolution is that such a slate of candidates would be supported by the organized forces of the party. The preface of this resolution recites that a disproportionate number of the present judges are members of another major party and have received their appointment because of that fact.

Whatever may be said of the abuses in the appointment of judges exclusively out of the ranks of a prevailing political party, which sadly enough is the general practice, such evils certainly will not be cured by deliberately drawing the *election* of judges into practical party politics. The judge who aspires to reelection and the lawyer who seeks to be elected to judicial office, are entitled to be and should be entirely free of obligation to any political group or party. Any contrary tendency should meet with the unequivocal opposition of all who believe in an untrammeled judiciary. It is a historical fact that the ascendancy to great power of any political group ultimately leads to an actual or attempted domination of the judiciary. One of the blackest features of the Tweed dynasty in New York was the complete dominance by the political bosses of the *nisi prius* courts of that city.

# PRESIDENT'S PROGRESS REPORT

THE LOS ANGELES BAR ASSOCIATION has commenced another administrative year, which gives promise of being an extremely active one. A number of committees of the Association are now giving active and energetic consideration to a large number of matters. The delegates to the conference of State Bar Delegates have held two meetings, at which consideration was given to the preliminary report of the State Bar Committee on administration of justice dealing with the revamping of our Appellate Courts and Appellate Court procedure. It appears that a definite program, with a proposed constitutional amendment, will be submitted to the next meeting of the conference of Bar Delegates and the State Bar convention to be held in Santa Barbara in September of this year.

The year 1939 will mark another meeting of the State Legislature. It is therefore necessary that the Bar legislative program be framed and approved during the current year in order that same be ready for submission to the Legislature when it meets in 1939. Members of the Association who have legislative matters in mind should at once submit them, to the end that adequate consideration may be given such matters before the meeting of the State Bar in September.

*Judicial Election*

This is another Judicial election year, and a large number of incumbent judges will be called upon to go before the electorate at the general election this fall. The Los Angeles Bar Association will conduct its usual plebiscite of the Bench and Bar of Los Angeles County in connection with this election.

An attempt was made two years ago to inject partisan politics into the Judicial election. This was firmly and successfully resisted by this Association. It appears that a similar attempt may again be made this year. The Board of Trustees has adopted a resolution condemning all attempts to inject partisan politics into Judicial elections.

It is the feeling of the Board of Trustees, as expressed in their resolution, that the seeking or accepting of partisan endorsements seriously reflects upon the qualifications of a Judicial candidate. The people of this state have long since declared in favor of a non-partisan Judiciary. This Association is definitely committed to that principle and should resist all attempts to violate it.

*Judicial Independence*

Recurring attempts to influence decisions in our courts by extraneous means and by political or group pressure upon judges having matters under consideration have called for definite and affirmative action on the part of this Association. The Board of Trustees is hopeful that the vigorous and successful prosecution of a number of contempt proceedings which have just been concluded will serve to deter such vicious and unthinking practices in the future. The maintenance of the independence of our Judiciary rests largely upon the shoulders of lawyers. We should not be hesitant in repelling all encroachments thereon. At the same

time, the members of our profession should be most diligent in refraining from assisting or in anywise countenancing any attempt to improperly influence judicial decisions.

A number of years ago the American Bar Association made a vigorous declaration against the taking of photographs in court rooms. Similar action was taken by the conference of Bar Delegates and the State Bar at the convention in Del Monte in 1937. A resolution of like purport has been adopted by the Board of Trustees of this Association. Copies of all of these resolutions have been placed in the hands of each of our judges. An extended conference between a committee representing this Association and the newspaper publishers has been held, but nothing was accomplished thereby except to demonstrate that the position of this Association and that of the newspapers are quite wide apart. There are a number of judges who will not permit the taking of photographs in their court rooms—particularly during trials. Those who conform to the declarations of the American Bar Association, the State Bar and the local Bar are entitled to our highest commendation in this respect. Unfortunately, other judges do not see fit to prevent the taking of such photographs—a practice which we feel is entirely inconsistent with the dignity with which court proceedings should be conducted. The members of our profession should be most circumspect in seeing that they in no way aid or abet the violation of the principles declared in the three resolutions to which reference has been made.

FRANK B. BELCHER, President.

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# RESOLUTION OF BOARD OF TRUSTEES IN RE: PLEBISCITE

RESOLVED, it is the sense of the Board of Trustees of Los Angeles Bar Association that it is contrary to the spirit, purpose and intent of the plebiscite for any candidate to compaign for himself or herself, or for any member or members of the profession to campaign or join in a campaign for the support of any candidate, by petition, circulars, letters, postals, telephone, or otherwise to endeavor to influence the vote in the plebiscite, and that immediately prior to the taking of each plebiscite the attention of each candidate shall be respectfully invited to this resolution, and

BE IT FURTHER RESOLVED, that any violation of the spirit or purpose of the foregoing resolution shall be deemed a breach of ethics by the offender.

This is to certify that the above is a true and correct copy of resolution adopted by the Board of Trustees of Los Angeles Bar Association in regular session assembled on Wednesday, October 20, 1937.

J. L. ELKINS,

[Seal.] *Executive Secretary, Los Angeles Bar Association.*

# PROCEDURE UNDER THE NATIONAL LABOR RELATIONS ACT

By Leonard S. Janofsky, of the Los Angeles Bar

THREE recent decisions of the United States Supreme Court make the present a most opportune time for all attorneys to undertake a brief survey of procedure before the National Labor Relations Board.[1]

On April 12, 1937, the Supreme Court, in upholding the constitutionality of the National Labor Relations Act, in *National Labor Relations Board v. Jones & Laughlin Steel Corporation,* 81 L. Ed. 563, stated:

> "The procedural provisions of the Act are assailed * * * Respondent was notified and heard. It had opportunity to meet the charge of unfair labor practice upon the merits, and by withdrawing from the hearing it declined to avail itself of that opportunity."

It is self-evident from the above language that once a hearing is commenced before the Board a case will seldom arise when an attorney will advise his clients to withdraw therefrom, and if the attorney does not so withdraw he should be adequately advised as to the proper procedure before, during and after the hearing.

On January 31, 1938, the Supreme Court rendered its decision in *Myers v. Bethlehem Shipbuilding Corporation,* 82 L. Ed. 399, which held that a Federal District Court was without jurisdiction to enjoin the National Labor Relations Board[1] from holding a hearing upon a complaint issued by the Board against an employer alleged to be engaged in unfair labor practices.[2]

This decision makes it still more incumbent upon the practicing attorney to acquaint himself with Labor Board procedure, because of the extreme difficulty of avoiding a Labor Board hearing by way of injunctive proceedings.

Last month the Supreme Court, speaking through Mr. Chief Justice Hughes, in the case of *Santa Cruz Fruit Packing Company v. National Labor Relations Board,*[3] upheld the Board's jurisdiction to prohibit unfair labor practices by a plant which obtained all of its raw materials locally and shipped only 38 per cent of its product to customers in other states. Because of this latest holding of the Supreme Court it would appear that additional members of the Bar must, of necessity, become acquainted with Labor Board procedure. An interesting statement by the Court in the *Santa Cruz* case to the effect that "* * * injurious action burdening and obstructing interstate trade in manufactured articles may spring from labor disputes irrespective of the origin of the materials used in the manufacturing process" may be construed to foreshadow the possible extension of the jurisdiction of the Board over the employer who is engaged in purely local activity, except that he purchases a portion of his raw materials outside the

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[1]Hereinafter referred to as the Board.

[2]Accord: *Newport News Shipbuilding & Drydock Co. v. Schauffler,* 82 L. Ed. 406.

[3]Decided March 28, 1938 (CCH No. 193884).

state. In that event it would appear that practically every attorney would do well to acquaint himself with Labor Board procedure.[4]

*Procedure Summary*

In this article the author will attempt to set forth a brief summary of procedure under the National Labor Relations Act.[5]

## A. QUALIFICATIONS FOR ADMISSION TO PRACTICE BEFORE BAR

Section 10(b) of the Act provides that one may "appear *in person or otherwise*"[6] in a hearing conducted by the Board or one of its agents. Section 25 of the Rules and Regulations of the Board[7] provides that "any party to the proceeding shall have the right to appear at such hearing *in person*, by counsel, *or otherwise*, * * *." As a consequence of the above-quoted provisions, all of parties to a proceeding before the Labor Board may be represented by counsel,[8] but, on the other hand, it is quite common for employee organizations to be represented by an organizer or union officer[9] and for the employer to be represented by one of its officers.[10] It appears, therefore, that there are no requisite qualifications for admission to practice before the board.[11]

## A. QUALIFICATIONS FOR ADMISSION TO PRACTICE BEFORE THE BOARD

### 1. The Pleadings

Proceedings for the prevention of an unfair labor practice are commenced by the filing of a charge,[12] which charge may be filed by any person or labor organization.[13] A form for making a charge is supplied by the Regional Director, one of the Board's local administrative officers,[14] and should contain the names of the parties involved and a brief statement of facts constituting the alleged unfair labor practice.[15]

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[4]The ever-present possibility of the passage of State Labor Relations Acts also makes it incumbent upon the practicing attorney to acquaint himself with procedure before the Board. (See California Assembly Bill 1065 and California Senate Bill No. 603 introduced into the 1937 session of the Legislature.) Labor Relations Acts have already been enacted in Wisconsin (Wis. Laws 1937, Chapter 51); New York (Chapter 443, Laws 1937); Pennsylvania (Act No. 294, Laws 1937); Utah (Chapter 55, Laws 1937); Massachusetts (Chapter 463, Laws 1937).

[5]Hereinafter referred to as the Act.

[6]Italics ours unless otherwise indicated.

[7]Series 1 as amended April 27, 1936.

[8]*Matter of Marlin Rockwell Corp.*, Case No. R-342—decided February 11, 1938.

[9]*Matter of Spray Woolen Mill*, Case No. R-531—decided February 18, 1938.

[10]*Matter of Associated Press*, Case No. R-536—decided February 2, 1938.

[11]An examination of qualifications for admission to practice before other administrative bodies reveals that they are not very stringent. (Interstate Commerce Commission Rules of Practice, Rule I—(A) and (B); Securities & Exchange Commission Rules of Practice as amended No. 4, 1936; Board of Tax Appeals Rules of Practice, Rule 2.)

NOTE: In this connection it is interesting to note that H. R. 9635, a bill now pending in the House of Representatives, is designed to prevent and make unlawful the practice of law before Government Departments, Bureaus, Commissions, and their agencies by those other than duly licensed attorneys at law.

[12]Act Section 10(b).

[13]Article II, Section 1, Rules and Regulations of the Board hereinafter referred to as Rules.

[14]A charge is generally filed with the Reginal Director in the region in which the alleged unfair labor practice has occurred. See, however, Rules Article II, Sections 2 and 37.

[15]Rules, Article II, Section 4.

After the charge is filed the local officers of the Board investigate the same, which investigation generally involves an informal conference with all of the parties involved.

If the Regional Director is unable to obtain compliance he thereafter issues a formal complaint containing a notice of hearing before a Trial Examiner at a time not less than five days after the service of the complaint,[16] a copy of the charge should be attached to the complaint.[17]

The allegations of the complaint are extremely important, since they contain the jurisdictional foundation for the action.[18] Motions for Bills of Particulars[19] or for an order that the complaint be made more specific[20] are generally denied.[21]

When the complaint is served the respondent has the right to file an answer within five days thereafter,[22] which answer may contain affirmative defenses.[23] The original and three copies of the answer must be filed with the Regional Director issuing the complaint, and a copy thereof should be served on each of the other parties to the proceeding.[24] The answer should be filed promptly, although an order may be obtained extending the time for its filing.[25]

Amendments to a complaint may be met by an amended answer.[26]

At the time of or prior to the filing of the Answer it is common and often advisable for counsel for the respondent to appear specially and file a motion to dismiss or to quash the complaint[27] based on jurisdictional grounds. It has been held that the respondent, by proceeding with a trial upon the merits after the overruling of such motions, does not waive any objection by respondent to the jurisdiction of the Board.[28]

The Trial Examiner designated by the Board to conduct the hearing generally rules upon all motions.[29]

Motions to intervene may be filed prior to or at the hearing. Intervention may be allowed for all purposes or only for limited purposes.[30]

### 2. The Hearing

Hearings for the purpose of taking evidence upon a complaint alleging unfair labor practices are conducted by an agent of the Board known as a Trial

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[16]Act Section 10(b); Rules Article II, Section 5.

[17]*Matter of The Jacobs Bros. Company*, Case No. C-244, decided February 25, 1935.

[18]See *Federal Trade Commission v. Gratz*, 253 U. S. 421.

[19]*Matter of The Salvay Process Company*, Case No. C-291—decided February 16, 1938; *Matter of The Jacobs Bros. Company*, Case No. C-244—decided February 25, 1938.

[20]*Matter of Indianapolis Glove Company*, Case No. C-251—decided February 11, 1938; *Matter of Zenite Metal Corporation*, Case No. C-214—decided February 19, 1938; *Matter of Ingram Mfg. Company*, Case No. C-335—decided March 11, 1938.

[21]These rulings appear to follow the precedent established by the Federal Trade Commission. (See Henderson—The Federal Trade Commission, page 59.)

[22]Act Section 10(b); Rules Section 10.

[23]*Matter of National Motor Bearing Co.*, Case No. C-221—decided February 18, 1938.

[24]Rules Section 11.

[25]*Matter of National Motor Bearing Co.*, Case No. C-221—decided February 18, 1938.

[26]Rules Article II, Section 13.

[27]*Matter of Zenite Metal Corporation*, Case No. C-214—decided February 19, 1938.

[28]*National Labor Relations Board v. Anwelt Shoe Mfg. Co.* (CCA 1st—decided December 8, 1937—reported in CCH, page 18110).

[29]The Regional Director has a limited power to rule upon motions, to the extent of extending the date of hearing (Rules Article II, Section 6) extending the time for answer (Rules Article II, Section 12) rule upon motions to intervene filed prior to the hearing (Rules Article II, Section 19).

[30]*Matter of Todd Shipyards Corporation*, C-239—decided February 1, 1938.

Examiner. The conduct of the hearing and the evidence there produced is of extreme importance, both to the Board and to counsel for the various parties, since the findings as to the facts are deemed conclusive upon review by a Circuit Court of Appeals only if supported by evidence.[31]

In *Appalachian Elec. Power Co. v. National Labor Relations Board*[32] the rule with respect to the conclusiveness of the Board's findings was stated in the following language:

> "We are bound by the Board's findings of fact as to matters within its jurisdiction, where the findings are supported by substantial evidence; but we are not bound by findings which are not so supported. 29 U. S. C. A. 160(e)(f); *Washington, Virginia & Maryland Coach Company v. National Labor Relations Board,* 301 U. S. 142, 57 S. Ct. 648, 650. The rule as to substantiality is not different, we think, from that to be applied in reviewing the refusal to direct a verdict at law, where the lack of substantial evidence is the test of the right to a directed verdict. In either case, substantial evidence furnishing a substantial basis of facts from which the fact in issue can reasonably be inferred; and the test is not satisfied by evidence which merely creates a suspicion or which amounts to no more than a scintilla or which gives equal support to inconsistent inferences. *Cf. Penna. R. Co. v. Chamberlain,* 288 U. S. 333, 339-343."

The Act provides that the rules of evidence prevailing in courts of law or equity shall not be controlling,[33] and this provision of the Act has been directly upheld by judicial decision.[34] However, if hearsay testimony is too remote to be entitled to credence, such fact may constitute a basis for authorizing the correction of the Board's findings,[35] and the Board has apparently taken cognizance of this fact.[36]

An interesting decision has recently been handed down by the United States Supreme Court in *National Labor Relations Board v. Penn. Greyhound Lines,* 82 L. Ed. 524, wherein the Court held that an order of the Board directing an employer respondent to disestablish a company-dominated union did not violate the requirements of due process of law in respect to such union by virtue of the fact that the union was given neither an opportunity to be heard nor notice of the hearing.[37] Of late it appears, however, to be the Board's practice to serve a notice of hearing and copy of the complaint upon the allegedly company-domi-

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[31] *National Labor Relations Board v. Jones & Laughlin Steel Corporation,* 81 L. Ed. 563, 580.

[32] Decided by the Fourth Circuit Court of Appeals on January 14, 1938; reported in CCH, page 18150.

[33] Act, Section 10(b).

[34] *Remington Rand v. Labor Board* (CCA 2nd)—decided February 14, 1938—reported in Labor Relations Reports February 21, 1938, page 26; followed in *Consolidated Edison Company of New York, Inc. v. National Labor Relations Board* (CCA 2nd) decided March 14, 1938—reported in Labor Relations Reports March 21, page 25.

[35] See *Consolidated Edison Company of New York v. National Labor Relations Board* (CCA 2nd)—decided March 14, 1938, reported in Labor Relations Reports March 21, 1938, page 25.

[36] See *Matter of Armor & Co.,* R-494—decided March 15, 1938.

[37] *National Labor Relations Board v. Penn Greyhound Lines,* 82 L. Ed. 524, 530: "As the order did not run against the Association it is not entitled to notice and hearing. Its presence was not necessary to enable the Board to determine whether respondents had violated the statute or to make an appropriate order against them."

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nated union where an order is sought directed to a respondent employer seeking disestablishment of, and withdrawal of recognition from, such union.

Under the provisions of Section 37 of the Rules and Regulations of the Board the Board has at times ordered that the proceedings be transferred from the Trial Examiner to the Board, with the result that the Trial Examiner makes no intermediate report, as contemplated by Rule 32 of the Board's Rules and Regulations, to which intermediate report the parties are allowed an opportunity to file exceptions.[38] This practice was attacked by the petitioner employer in the *Consolidated Edison Company* case, *supra,* wherein the Second Circuit Court of Appeals held:

> "This procedure is not one likely to inspire confidence in the impartiality of the proceedings. It results in the findings of fact being made by persons who did not see the witnesses —a matter which may have far-reaching consequences in view of the very limited power conferred upon the courts to review the Board's findings of fact. But, though we do not commend such procedure, we cannot say it has deprived the petitioner of due process of law."

The Act provides that the person against whom the unfair labor practices are charged may give testimony at the hearing. As a result, if the Trial Examiner or the Board unreasonably refuses leave to the respondent employer or any other party to adduce testimony, such refusal may be successfully attacked in the Circuit Court of Appeals upon review of the Board's order.[39]

If, in the opinion of counsel, evidence is improperly excluded or admitted, or any other rulings adverse to counsel are made, an exception should be duly taken and noted[40] and, where necessary, an appropriate offer of proof should be made.[41]

The Board has decided both for and against motions to disqualify the Trial Examiner.[42] Motions to strike testimony have been granted[43] and, under appropriate circumstances, the holding of night sessions and the postponement of the right to cross-examine the Board's witnesses until the completion of the Board's case have been upheld.[44]

It is often possible to expedite the hearing by stipulations of fact which are provided for under the Board's Rules and Regulations;[45] however, private settlements between the parties to the proceedings are strictly scrutinized by the Board.[46]

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[38]See Board Rules, Article II, Section 34.

[39]*Consolidated Edison Company v. National Labor Relations Board*—decided March 14, 1938, and reported in Labor Relations Reports March 21, 1938, page 25.

[40]*Matter of A. S. Abell Company,* Case No. C-270—decided February 25, 1938.

[41]*Matter of Ingram Mfg. Co.,* Case No. C-335—decided March 11, 1938.

[42]*Matter of National Motor Bearing Corporation,* Case No. C-221—decided February 18, 1938, where such a motion was denied; compare, however, *Matter of Vegetable Oil Products Company,* 1 N. L. R. B. p. .... (decided June 23, 1936), where such a motion was granted.

[43]*Matter of National Motor Bearing Corporation,* Case No. C-221—decided February 18, 1938.

[44]*Matter of National Motor Bearing Corporation,* Case No. C-221—decided February 18, 1938.

[45]Board's Rules, Article II, Section 27.

[46]*Ingram Manufacturing Co.,* Case No. C-335—decided March 11, 1938.

The Board rules also provide an appropriate weapon to be used against recalcitrant witnesses testifying on behalf either of the respondent employer or of the union, in that Article II, Section 31 of the Board's Rules and Regulations provides that the refusal of a witness to answer a proper question shall be ground for the striking out of all testimony previously given by such witness on related matters.

After the hearing the Trial Examiner makes an intermediate report, which is transmitted to the Board in Washington, D. C. A copy of the report is served upon each of the parties to the proceeding. Within ten days from the date of service of such report any party desiring to take an exception thereto or to any other part of the record must file an original and four copies of a Statement of Exceptions with the Board. The Statement of Exceptions should be served upon all of the parties to the proceeding,[47] and an answer to a Statement of Exceptions may also be filed.[48]

The United States Circuit Court of Appeals for the Ninth Circuit, in the case of *National Labor Relations Board v. Oregon Worsted Co.*,[49] considered the nature of the recommendations of the Trial Examiner contained in his intermediate report, and held that the Board might accept or reject and/or add to the recommendations such other orders as might seem warranted by the evidence and its findings.

The parties are generally allowed to file briefs with the Board and argue orally before the Board, but the refusal of the right to present oral argument to the Board does not violate the constitutional right to due process of law.[50]

After the Board makes its order the Board may at any time, until a transcript of the record is filed with a Circuit Court of Appeals or in an appropriate case in a District Court, upon reasonable notice, modify or set aside in whole or in part any finding or order issued by it.[51]

## C. PROCEEDINGS IN REPRESENTATION CASES

It is to be noted that the proceedings under Section 9(c) of the Act to secure a certification of representatives for the purposes of collective bargaining are inaugurated not by a charge followed by the filing of a complaint, as in an unfair labor practice case, but by the filing of a petition requesting the Board to investigate and certify representatives.[52] A form of such petition may be obtained from the Regional Director.[53] If it appears to the Board that an investigation should be instituted, the Regional Director is authorized by the Board to undertake such investigation and a hearing is held in the same manner as a hearing upon a charge of unfair labor practices.

After hearing, the Board may certify representatives based upon the record made at the hearing, or direct a secret ballot of employees for the purpose of determining representatives, or dismiss the petition.[54]

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[47]Board Rules, Article II, Section 34.
[48]*Matter of Knoxville Glove Co.*, Case No. C-271—decided February 21, 1938.
[49]Decided January 28, 1938, and reported in CCH, page 18169.
[50]*Consolidated Edison Company of New York vs. National Labor Relations Board*—decided March 14, 1938, and reported in Labor Relations Reports, March 21, 1938, page 25.
[51]Act, Section 10(d).
[52]Article III, Section 1, Board Rules.
[53]Article III, Section 2, Board Rules.
[54]Board Rules, Article III, Section 8.

If a secret ballot is directed, the agent of the Board conducting the ballot prepares an intermediate report, which report may be objected to within five days after service thereof. If in the opinion of the Regional Director any such objection raises a substantial and material issue with respect to the conduct of the ballot, a notice of hearing is held on such objections before a Trial Examiner.

## PROCEDURE ON APPEAL

Orders of the Board are not self-executing, but the Act provides that the Board shall have the power to petition any Circuit Court of Appeals of the United States[55] for the enforcement of its order, in which case the Board certifies and files in the court a transcript of the entire record before the Board.

Conversely, any person aggrieved by a final order of the Board may obtain a review of such order in any Circuit Court of Appeals of the United States.[56] Under the proper circumstances a person or organization who did not appear in the proceedings before the Board but falls within the statutory definition of a "person aggrieved" by the Board's order may, apparently, make an appearance before the Circuit Court of Appeals as intervenor.[57]

The rights of the parties to a proceeding before the Board are further protected by the provision of Section 10(e) of the Act to the effect that, upon a showing that additional evidence is material and that there were reasonable grounds for the failure to adduce it before the Board, the Court may order such additional evidence to be taken and made a part of the transcript.[58]

It is to be noted that, in order to obtain a petition for review, the order of the Board sought to be reviewed must be a final order. Consequently, an order of the Board made pursuant to Section 9(c) of the Act certifying representatives is not appealable.[59] However, whenever an order of the Board based upon a charge of unfair labor practices is based in whole or in part upon facts certified following an investigation pursuant to Section 9(c) of the Act, and a petition for enforcement or review of such order is filed, the order entered under Section 9(c) of the Act may then be reviewed in the Appellate Court.

## CONCLUSION

It would appear that the attorney who prepares his case well, acquaints himself with the Rules and Regulations of the Board, as well as the decisions of the Board and the various Circuit Court of Appeals on procedural points should be able to adequately protect the interests of his clients in any proceeding before the Board. Furthermore, the constitutional guarantee against arbitrary and unreasonable action by an administrative body, as set forth in *National Labor Relations Board v. Jones & Laughlin Steel Corporation, supra,* provides an adequate remedy to safeguard the rights of all parties before the Board.

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[55]In some instances the petition for enforcement may be filed with the United States District Court. See Act, Section 10(e).

[56]Act, Section 10(f).

[57]*Consolidated Edison Company of New York v. National Labor Relations Board,* CCA 2nd—decided March 14, 1938, reported in Labor Relations Reports March 21, 1938, page 25.

[58]An application for leave to adduce additional evidence was denied in *National Labor Relations Board v. Anwelt Shoe Mfg. Co.,* CCA 1st—decided December 8, 1937—reported in CCH, page 18110; but was granted in *American Potash & Chemical Corporation* (CCA 9th, January 10, 1938), and has also been granted in other cases.

[59]See *Matter of Wallach's, Inc. v. Dr. John P. Boland* (App. Div. N. Y.), decided February 18, 1938, and reported in CCH 18101.

# BAR GOLF TOURNAMENT

THE first Bar Association golf tournament of the new Club Year, held Friday, March 18, at Griffith Park, was a grand success. Over fifty prominent golfing lawyers and their guests participated and remained for dinner at the new Clubhouse.

Members of the Bar golf group presented Floyd Sisk, retiring Chairman of the Golf Committee for the past two years, with a set of new woods in appreciation of his success in renewing interest in the Bar golf tournaments.

Gold, silver and bronze medals, bearing replicas of the Association's seal, were given to winners of the low gross and low net scores, respectively. Those receiving the medals were: Low gross, gold medal, Hiram E. Casey, 75; second low gross, silver, Floyd Sisk, 77; third low gross, bronze, Aubry Devine, 80. Low net, gold medal, Paul Angelillo, 77-12-65; second low net, silver, Victor Showers, 90-22-68; third low net, bronze, Walter Keen, 81-12-69.

The following won balls for low gross prizes: Robert Powell, Ray Chesebro and Cliff Argue.

Those winning balls for low net scores were: H. A. Decker, Courtney Teel, Marshall Stimson, C. M. Hanson, Kent Redwine, Richard Turner, Kyle Grainger and Richard Yeamans.

Competition will continue throughout the year to determine the champion of the Bar Association and also the winner of the President's Cup to be presented by President Frank Belcher.

HIRAM E. CASEY, Chairman.

# GROWTH OF BAR MEMBERSHIP

New members who have joined the Los Angeles Bar Association since January 10, 1938 number 41, as follows:

Beidler, Paul W.
Black, Matthew M.
Boileau, E. Burdette
Brown, Walter A.
Cathcart, Arthur J.
Coffey, Keating
Church, Charles H.
Colwell, Bundy
Conners, William J.
Cowan, Henry N.
Davis, Lawrence Jay
Ehrlich, Jerome L.
Forster, Richard H.
Galbally, William
Gamble, William P.
Graham, Richard Harper
Holland, Kenneth A.
Hutton, Hampton
Kirby, P. James
Kohlmeier, Bayley
LeSage, Thomas W.
Lev, Lester Lewis
Melrose, Walter A.
Moore, Robert Edward, Jr.
Myers, John W.
Nixon, Richard M.
Petermann, John Bernhard
Loud, Harold L.
Renwick, Bruce
Rinnert, Joseph Paul
Rhodes, Kenneth Olney
Schwab, Oliver B.
Shire, Harold Raymond
Stebbings, A. E.
Steiner, Harold W.
Stoll, Katherine Adams
Staples, Herbert G.
Taft, Thurlow T.
Tighe, Stephen
Wall, Sidney H.
Weberg, Carroll

## THE THINKERS

*"The law is the calling of thinkers. But to those who believe with me that not the least godlike of man's activities is the large survey of causes, that to know is not less than to feel, I say—and I say no longer with any doubt—that a man may live greatly in the law as well as elsewhere; that there as well as elsewhere his thoughts may find its unity in an infinite perspective; that there as well as elsewhere he may wreak himself upon life, may drink the bitter cup of heroism, may wear his heart out after the unattainable. . . .*

*"Your education begins when what is called your education is over—when you no longer are stringing together the pregnant thoughts, the 'jewels five-words-long,' which great men have given their lives to cut from the raw material, but have begun yourselves to work upon the raw material for results which you do not see, cannot predict, and which may be long in coming—when you take the fact which life offers you for your appointed task. No man has earned the right to intellectual ambition until he has learned to lay his course by a star which he has never seen—to dig by the divining rod for springs which he may never reach. In saying this, I point to that which will make your study heroic."*—(Justice Oliver Wendell Holmes, in address to undergraduates at Harvard University, February 17, 1886.)

# TERMS OF SUPERIOR COURT JUDGES EXPIRING IN 1938

THE terms of twenty-one Superior Court Judges will expire in 1938. The primaries will be held on August 30 and the general election on November 8. The Los Angeles Bar Association will hold its usual plebiscite on all candidates. Following is a list of incumbents whose terms expire:

Judge Charles D. Ballard
Judge Edward R. Brand
Judge Ingall W. Bull
Judge Georgia P. Bullock
Judge Charles S. Burnell
Judge W. Turney Fox
Judge Walter S. Gates
Judge Charles E. Haas
Judge Minor Moore
Judge Clement D. Nye
Judge Benjamin J. Scheinman
Judge Ruben S. Schmidt
Judge A. A. Scott
Judge Robert H. Scott
Judge Clement L. Shinn
Judge Lewis Howell Smith
Judge Jess E. Stephens
Judge Leslie E. Still
Judge Carl A. Stutsman
Judge Henry M. Willis
Judge Parker Wood

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# INTER-UNION DISPUTES; LABOR LAW

By Carey McWilliams, of the Los Angeles Bar

IN the rapidly developing field of labor law there is no more important subject at the moment than that of inter-union disputes, *i. e.*, disputes which arise within trade unions. In this limited space, it is impossible to discuss the various types of cases which have arisen or to summarize the general problems involved. Fortunately, reference can be made to several leading law review articles which survey the entire subject and cite the leading cases.[1] An examination of these articles will furnish the background and the references for the following observations.

Inter-union disputes have been brought before the courts in an increasing volume during the last few years. The reasons back of the increase in this type of litigation are obvious: the amazing growth in trade union membership; the present diversity of views and attitudes within the trade union movement; and the growing importance to the worker of trade union membership. In general, inter-union disputes may be classified under the following heads: (a) disputes between a member and his trade union, involving the power of a trade union to discipline a member; (b) disputes between a local organization and the parent body with which it is affiliated, involving the right of an international union to suspend or to revoke the charter of a local union, or otherwise to interfere with its administration; and (c) a variety of disputes over the construction to be placed upon the constitution and by-laws, and rules and regulations, of trade unions.

Before considering any of these classifications, it should be observed that, with some exceptions, notably among the higher paid categories of workers in the motion picture industry, most trade unions are organized as voluntary, unincorporated associations. The rule is well established, of course, with respect to such associations, that their constitution and by-laws are to be construed as a contract between the members, defining their respective rights and obligations. Although this is the basic concept governing inter-union disputes, much doubt has been expressed by recent commentators as to its validity when applied to the affairs of trade unions. What, for example, is the consideration? Who is the promisor and who is the promisee? A breach of the contract, so-called, does not give rise to an action for damages unless definite property rights are involved. The element of consent, moreover, usually exists only by implication. Despite these and other objections, however, the rule is too well established to be questioned and must be accepted as the governing consideration. In construing the constitutions and by-laws of trade unions as contracts, the courts attempt, as far as possible, to give full effect to their provisions, subject to the qualification that such provisions must not contravene public policy; they must be consistent with general principles of the common law; and they must not violate any rights granted under the state or federal constitution.[2]

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[1] *The Control of Labor Through Union Discipline*, by Miller D. Steever, 16 Cornell Law Quarterly 212; *Disputes Within Trade Unions*, by William W. Stafford, Yale Law Journal, Vol. 45, p. 1935; *Trade Union Abuses*, by Copal Mintz, 6 St. John's Law Review 272; *Internal Affairs of Associations Not for Profit*, by Z. Chafee, 43 Harvard Law Review 993; *A New Legal Problem In Relation to Capital and Labor*, 74 University of Pennsylvania Law Review 523.

[2] 6a Cal. Jur., p. 320, Sec. 166.

## DISPUTES

Disputes between a member of a trade union and the trade union itself arise under a wide variety of facts, but, generally, with respect to the right of the organization to discipline, to suspend, or to expel a member. Where there is no provision in the organic law of the association with respect, say, to expulsion, the rule is that such a right exists by implication, but only where the act of the member is such as to be subversive of the purposes for which the organization was formed.[3] Most trade union constitutions set forth specific grounds for suspension and expulsion. Where definite grounds are set forth, then the courts, on the theory that property rights are involved,[4] will take jurisdiction of the controversy. But the extent of their jurisdiction is not clearly defined, and no general rule can be adduced as the cases are in a state of considerable confusion and conflict. It is generally recognized, however, that a judicial review of disciplinary proceedings is limited to a determination of the following issues: (a) to determine whether the decision is contrary "to natural justice," as, for example, to determine whether the accused was given due and proper notice and accorded a "fair trial," which, by analogy, should follow ordinary criminal proceedings "so far as necessary to render substantial justice;"[5] (b) to determine whether the trade union has observed the procedural requirements of its constitution and by-laws; and (c) to determine if the trade union has acted in good faith.[6] It will be observed that these limitations are exceedingly vague. To some extent, the general nature of the review which courts will exercise is indicated by the statement frequently encountered in the cases that, when a trade union attempts to expel or to discipline a member, it acts in a quasi-judicial capacity[7] and must accord a quasi-judicial hearing.[8] The relief granted in such cases may be injunctive, mandatory or otherwise, or damages for wrongful expulsion.[9]

## INTER-UNION REMEDIES

Inter-union disputes are complicated by a further consideration. Trade union groups, anxious to protect their proceedings against external intervention, have adopted the practice of providing an elaborate method of appeal within the organization, which both individual members and subordinate units are supposed to pursue when seeking the redress of grievances. For example, a member complaining of the action of a local union, must generally appeal to the international president of the union; from the decision of the international president, an appeal must be taken to the international executive board; and from the decision of this board, a final appeal must be taken to the union in convention assembled. Generally the courts have said that a member cannot apply for legal or equitable protection unless he has first exhausted his "remedies" within the union, since such is the contract of the parties.[10] To this rule there have come to be many well-recognized exceptions: if the disciplinary proceedings are void for non-compliance with the constitution or are void as a matter of law (as where notice was not given the accused), then no appeal is

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[3] *Grand Grove v. Garibaldi Grove*, 130 Cal. 116
[4] *Dingwall v. Amalgamated Assn.*, 4 Cal. App. 565
[5] *Taboada v. Sociedad Espanola*, 191 Cal. 187.
[6] *Otto v. Journeyman Tailors Union*, 75 Cal. 308.
[7] *Grand Grove v. Garibaldi Grove*, 130 Cal. 116
[8] *Knights of the K. K. K. v. Francis*, 79 Cal. App. 383.
[9] 13 *Fed. Supp.* 873; *Sweetman v. Barrows*, 62 A. L. R. 311.
[10] *Hughes v. American Trust Co.*, 134 Cal. App. 484.

necessary;[11] where definite property rights are involved;[12] where the appellate bodies within the union meet infrequently or in another and remote locality;[13] where an unreasonable period of delay would necessarily intervene before the appeal could finally be determined;[14] where an appeal would be, for any reason, vain, idle, or illusory;[15] and, in some cases, injunctive relief has been granted to protect the status quo pending an appeal within the organization.[16] Although the foregoing and other exceptions have been developed, the courts follow the practice of allowing or disallowing the exception dependent upon what view they take of the particular controversy on the merits, and hence no regularity of rule or precedent has been evolved. In general the courts, with the possible exception of New York, have been reluctant to take jurisdiction and, as one commentator has observed, the litigant must "overcome an exceptional amount of judicial inertia" in order to get a hearing in court.

## APPLICATION OF RULES

The trade unionist who desires to test the action of the organization of which he is a member, is thus faced with uncertainty as to whether he can get

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[11] *Barbarick v. Huddell*, 139 N. E. 629; *Southern Lodge v. Eskholme*, 35 Atl. 1055.

[12] *Greenwood v. Building Trades Council*, 71 Cal. App. 159; *Ray v. Brotherhood of Trainmen*, 44 Pac. (2d) 787.

[13] *Brown v. I. O. O. F.*, 68 N. E. 145.

[14] *Bricklayers, Plasterers and Stonemasons v. Bowen*, 182 N. Y. S. 855.

[15] 13 S. W. (2d) 902; *Walsche v. Sherlock*, 110 N. J. Eq. 223; *Lo Bianco v. Cushing*, 177 Atl. 102.

[16] *Mullins v. Merchandise Drivers Local No. 641*, 185 Atl. 485.

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a hearing in court (in most cases, for practical reasons, no appeal within the organization is feasible), and, once in court, he is faced with a further and greater uncertainty, for, as I have indicated, the scope of judicial review is not clearly defined. For example, will the courts consider the weight of the evidence? Aside from reviewing the procedural regularity by which the disciplinary action has been invoked, the courts have, in some cases, set aside convictions where there has been an absence of proper evidence to support the charge[17] and, in one case, a conflict in the evidence was ignored where it was apparent that the charges were merely a means of effecting an expulsion really desired for other reasons.[18] The main difficulty which the courts have encountered, in these disputes, has been in the application of rules which work satisfactorily with other types of voluntary associations, such as religious societies and clubs, but which do not square with realties when applied to trade unions. For example, if a member of a club does not like the organization or feels that his rights have been violated, his option of resignation is ordinarily a complete remedy. But it is rather heavy irony to inform a worker in an industry which has been thoroughly organized, as, for example, where a closed shop agreement exists, that, if his rights have been violated, he can resign. Membership, under these circumstances, is itself a property right, and should be protected.[19]

Disputes between a local trade union and the parent body with which it is affiliated have been frequently brought before the courts. Most trade union constitutions set forth certain grounds upon which the international officials may suspend the charter of a local or revoke the charter, or, in some cases, remove elected officials and appoint officials in their stead. The courts have frequently expressed "amazement" at the arbitrary and dictatorial attitude too often assumed by international officials in dealing with local unions, and, in many cases, the courts have intervened to protect the funds and property of the local where international officials have acted illegally, *i. e.*, contrary to the organic law of the union, in suspending or revoking a charter.[20] A decision by the local courts of some interest on this point is the case of *Blumenberg v. Porter,* Superior Court No. 422-473, in which Judge Jess E. Stephens ruled that the international officials had the power to suspend temporarily elected officials and appoint officials in their stead.

## VARIETY OF CASES

As to disputes involving the construction to be placed upon the constitution and by-laws of a trade union, there is no end to the variety of cases which have arisen. A number of cases have been decided which consider the right of a trade union to classify its members, and to deprive one membership classification of rights granted another, and to apportion work among its members in an arbitrary manner. Many by-laws along this line have been held to be unreasonable.[21] Also disputes frequently arise as to rights in sick and accident benefit funds, and involving seniority rights, but cases of this type, involving as they do, specific property rights, have not presented a very difficult problem to the courts.

In conclusion it can be said that as the growth of trade unions increases, and as the unionization of industry becomes more complete, the legal problems

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[17] *Fritz v. Knaub,* 103 N. Y. S. 1003; *Reid v. Medical Society,* 156 N. Y. S. 780.

[18] 98 So. 572.

[19] *Heasley v. Operative Plasterers and Cement Finishers Assn.,* 188 Atl. 206.

[20] *Kehor v. Leonard,* 163 N. Y. S. 357; *Howard v. Weissman,* 31 Fed. (2d) 689; *Wichita Council v. Security Benefit Assn.,* 94 A. L. R. 629; *Grand Grove v. Grove No. 71,* 105 Cal. 219; *Gardner v. Newbert,* 128 N. E. 704.

[21] *Collins v. I. A. T. S. E.,* 119 N. J. Eq. 230; 97 A. L. R. 594.

arising out of inter-union relationships, will assume greater importance. If the trade unions do not recognize their responsibilities, and remove some of the sources of complaint which have already given rise to a large volume of litigation, it is quite likely that the present inadequacy and uncertainty of the legal remedy will result in the enactment of a Trade Union Disputes Act, an outline of which has already been suggested in a thoughtful article.[22] Trade union democracy is the end to be achieved, and if the trade unions cannot achieve this end themselves, their failure to do so will unquestionably invite regulatory legislation the necessity for which is already indicated in the confused and uncertain state of the law.

[22]6 *St. John's Law Review*, 272.

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*I deplore undeserved criticism of it (the Bar). I vision for it a prestige and influence which it has never yet attained. How can that prestige and influence be achieved? Only if we, as individuals, will work for a cleaner, better trained, better organized and more militant Bar. Only if we, as individuals, uninfluenced by retainers, undeterred by professional associations, with a vivid remembrance of the past, but with a liberal and open-minded outlook toward the future, will resume our places in public affairs.*—Walter P. Armstrong, President Tennessee Bar Association.

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# THE PRE-TRIAL CALENDAR

**The following discussion of the Pre-Trial Calendar of the Supreme Court of Los Angeles County, appears in the report of Judge Fletcher Bowron, to the Judicial Council for 1937. The first installment of the report was printed in the March number of the Bulletin. Judge Bowron was Presiding Judge of the Superior Court for 1937.**

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## THE PRE-TRIAL CALENDAR

The most important development having to do with the administration of the Superior Court of Los Angeles County during the year 1937 was the adoption of the pre-trial calendar system. The setting of a trial calendar in any large court is a difficult task. The principal elements that must be taken into consideration in the process of setting up a calendar for a trial court composed of numerous departments are: First, arriving at an estimate of the length of time of trial of each case; second, the making of an estimate of what proportion of cases set for trial will actually go to trial, taking into consideration settlements, engagement of counsel in other trials, absence or illness of material witnesses, and the numerous other facts and circumstances that occasion continuances and necessary delays in bringing civil actions to a conclusion; third, estimating the number of trial judges that will be available on the date for which the calendar is set.

It is obvious that questions arising in connection with the calendar cannot be accurately determined at the time a case is set for trial. The best any calendar judge can do is to use his best judgment, which means his best guess, based on past experience. It is just as essential in the efficient administration of the court to keep all departments busy on all trial days as it is to obviate periods of congestion, with resulting serious inconvenience and possible financial loss to attorneys, litigants and witnesses. Where it is practicable to vary the number of trial judges by bringing in judges from other counties when the calendar becomes overloaded, the calendar problem is not so serious, but when the number cannot be varied at will, the setting of a calendar is a most difficult task, particularly during periods of vacation.

For some years it was the practice in Los Angeles County to overset the civil trial calendar two and a half times, on the basis of original estimates; that is to say, for each civil trial department, on each court day there was set the equivalent of two and a half court days' work, based upon the estimate given in the memorandum of setting. This method did not work out with entire satisfaction. The oversetting of the calendar must depend to a large extent upon the time elapsing between the date a case is set for trial and the trial date. The greater the lapse of time, the more probability that cases will be compromised or otherwise adjusted, that attorneys will be engaged, that witnesses will be scattered, and hence a smaller percentage of cases will actually go to trial on the trial date. Moreover, the satisfactory working of any plan depends to a large extent upon the policy of the court with respect to granting continuances or ordering cases off calendar on the trial date and the ease with which cases ordered off calendar may thereafter be restored to the trial calendar.

## OLD PLAN

For a time prior to the adoption of the pre-trial system, a plan was followed of setting on the trial calendar (other than the short cause calendar) cases in approximately equal number to the trial judges, regardless of the estimated length of time of trial.

The trial calendar, due to many contributing causes, was in a very congested condition when I personally took over the administration of the calendar on November 1, 1936. On the first court day when I took the bench in the calendar department, there were some ninety trial matters on the day's calendar, with only a few trial departments open for business. Many cases were on the third or fourth call, having been trailing or continued from time to time by reason of the condition of the calendar. The court room was overcrowded with attorneys, litigants and witnesses. Many of the witnesses being under subpoena, were required to remain away from employment or business for a week or more before the trial got under way.

Various efforts were made to relieve the congestion. Cases were continued to a date certain wherever it appeared that a continuance would not seriously prejudice the rights of the parties, but such continuances only served to occasion more congestion at a later time, since the calendar was then set up for a period of approximately three months. All trial judges were informed of the serious condition of the calendar and the trial of cases was speeded up as much as possible. At that time five of the judges of the court were serving on the District Court of Appeal under assignment of the Judicial Council. An effort was made to secure the temporary return of these judges, or part of them, for trial work, but it was found that this could not be done without seriously affecting the scheduled disposition of cases on the overcrowded calendars in the appellate courts.

The next attempt to meet the situation was by appointment of *pro tempore* judges. Through the bar association and other legal organizations, many of the best attorneys of the local bar agreed to devote a considerable portion of their valuable time without compensation in an effort to clear up the calendar situation. However, it was found very difficult to induce attorneys on both sides of contested actions to stipulate to have their cases tried before *pro tempore* judges. In most instances litigants on one side or the other objected to such procedure. The result was that comparatively few stipulations were entered into and a relatively small number of cases disposed of in this manner.

The next step was to secure through the Judicial Council the designation of five judges of the Municipal Court to sit on the Superior Court during the latter part of 1936. In this manner, the immediate calendar problem was met but the future was uncertain.

The calendar was in the serious condition above referred to when, during the early part of December, 1936, B. Grant Taylor, Secretary of the Judicial Council of California, visited the Presiding Judge's chambers and discussed the problems of the court. It was the suggestion of Mr. Taylor that I give some consideration to the pre-trial calendar system that finally led to the adoption of the plan. Such material as was at hand was supplied by the Secretary of the Judicial Council and thereafter considerable correspondence was carried on with judges in those jurisdictions where the plan had been tried.

**NEW PLAN**

After becoming convinced that the pre-trial calendar offered the solution for the serious calendar problem of Los Angeles County, I submitted the matter to the judges of the court at a regular judges' meeting in January, 1937, and secured unanimous approval for a temporary adoption of the system primarily for the purpose of setting up the trial calendar. Thereafter, I took the matter up with the trustees of the Los Angeles Bar Association and with the Lawyers Club and committees of members of the local bar were appointed to cooperate in working out a plan adjustable to local conditions and conformable to statutory requirements of California. Much valuable assistance was thus given the court. In this connection I particularly desire to thank Loyd Wright, Esq., Frank B. Belcher, Esq., and Allen W. Ashburn, Esq., of the Los Angeles Bar, for their time and efforts in assisting in the drafting of the plan.

The plan put into operation is founded upon the pre-trial system developed in Wayne County, Michigan, and subsequently adopted in Massachusetts. Announcement of the plan was made by notice to all attorneys in Los Angeles County of February 4, 1937. The notice of the Presiding Judge was printed and distributed to each attorney in Los Angeles County at the expense of the Los Angeles Bar Association, the addressing and mailing being done through the office of the State Bar of California. The legal profession was thus notified that on and after the 1st day of March, 1937, all contested civil matters would be set on a pre-trial calendar and no such cause would be assigned to a trial department until after a pre-trial calendar hearing.

From the 1st of March until the 13th of October the pre-trial calendar was handled by the Presiding Judge in addition to his other work. The number of routine duties of the Presiding Judge did not permit sufficient time for the conducting of the pre-trial calendar and it was felt that more could be accomplished if one judge should give his undivided time to the pre-trial calendar, thus having an opportunity to carefully read and analyze all pleadings in advance of the calendar date to the end that issues could be fully discussed and whenever it appeared that the case could be resolved largely into a question of law, final disposition made without assignment to a trial department.

From October 13 until the end of the year the pre-trial calendar was presided over by Judge Robert W. Kenny. This change was more than justified by results.

While it is difficult to estimate the aggregate time saved in the trial of cases, the records of the court show that during the month of October, sixteen cases, which if tried would have consumed an estimated time of ten and a half days of court time, were finally disposed of at the pre-trial hearing. During the month of November, a total of twenty-nine cases, with estimated trial time of seventeen and a half days were concluded, and thirty-one cases that would have consumed nineteen and a half days were disposed of and judgment entered, during the month of December. These figures are in addition to other cases that were dismissed or ordered off calendar as a result of discussions at the time of calendar hearing. Many attorneys became convinced that they did not have a cause of action and at the conclusion of the pre-trial hearing asked that the matter go off calendar to permit consideration of the possibility of amendment or voluntary dismissal.

It is of course impossible to estimate the saving of time at the subsequent trial of actions after free discussion between court and counsel relative to the

issues. Frequently the issues were defined and narrowed and attorneys were thus advised in advance of trial as to what evidence would be necessary and what evidence would be needless.

**TIME SAVING**

Local attorneys have been somewhat slow in adopting the plan of reaching stipulations in advance of trial. However, each day a sufficient number of stipulations were entered into at the pre-trial hearing to save many days of court trial.

Other methods of shortening time of trial were rapidly developed. Whenever it became apparent that an answer was sham or frivolous, the court proceeded as if on motion for summary judgment. In other cases where after discussion it appeared that the plaintiff could not make out a case, the counsel was asked to make an opening statement of facts he intended to prove by evidence and legal action followed, the same as if such statement had been made in open court at the commencement of trial, and a nonsuit granted. Special defenses, particularly such as statute of limitations and *res adjudicata,* were considered and in many cases the causes of action were finally determined without the necessity of trial.

This practice of trying the issues raised by special defenses in advance of trial is one that has met with the general approval of members of the bar. In many other cases, where it became apparent that on the trial objections would be made to the introduction of any evidence on the ground that the complaint did not state facts sufficient to constitute a cause of action, arguments on legal points were presented, either orally or by submission of briefs, regardless of former ruling on general demurrer.

Other cases disposed of at the time of pre-trial hearing include those cases where practically the sole issue was one of law, after stipulations were made as to facts. It was further found to be very helpful to have a brief general discussion between attorneys and the pre-trial calendar judge, relative to the facts and law of the case, even though formal stipulations were not entered into. In this manner attorneys could be advised in advance of trial whether opposing counsel questioned the due execution or delivery of a document; whether it would be necessary to make more than mere formal proof as to certain facts; the extent of foundation evidence that might be required for the introduction of books of account or other evidence. In some cases the order of proof was determined at the time of pre-trial. Sometimes it would be agreed that a certain phase of the case would be tried and thereafter a continuance granted after the ruling of the court as to certain issues.

The possibilities under the pre-trial calendar system are almost limitless, but ultimate success depends upon full cooperation of members of the bar and can only come after some years of experience when attorneys become accustomed to the new procedure. Full success further depends upon sufficint time being devoted by the calendar judge to each matter as the circumstances may require.

Whatever the relative success of the system may have been with respect to saving trial time, the pre-trial calendar undoubtedly proved the salvation of the trial calendar problem. When estimates of length of time of trial were based upon the guess of the attorney filing the memorandum for setting, the court did not have advantage of information from the other side, except in rare instances.

Under the new system both attorneys supply the court with their estimates and also additional facts as to the issues, number of witnesses and other information, so that the calendar judge from his own experience can with reasonable accuracy, approximate the time of trial.

Another cause of congestion and trial delays has always been the engagement of counsel in another court or in another department of the same court. Now the attorney who will try the case, or a representative of his office with knowledge of the facts, appears with his trial calendar, and when a trial date is fixed it is selected so as not to interfere with previous trial engagements. In this manner, attorneys are able to go from the Municipal and Federal Courts and branch departments at Long Beach, Santa Monica, Pasadena or Pomona, or from trials in other counties, into trials in the Superior Court of this county without serious conflicts or inconveniences. There have been very few days since March 1st last, when cases have been carried over until the following day and so far as can be recollected no case has been compelled to trail until a second trial day by reason of the condition of the calendar.

**HERE TO STAY**

After the announcement of the inauguration of the pre-trial calendar, many attorneys of the local bar expressed considerable doubt as to the innovation. Many did not understand the purpose of the plan and some feared that the court would attempt to compel attorneys to reveal the nature of the evidence they proposed to present even to the extent of divulging the names of witnesses and the nature of expected testimony. Such was never the intention. In fact, the experience of most judges and attorneys leads to the conclusion that there must be a certain element of surprise in the trial of actions to fully establish the truth in many cases. Moreover, it is generally felt that the theory of discovery should not be carried too far, and inspection of documents in possession of an adverse party should not go beyond specific demands; that is to say, in the main, discovery should be limited to information in possession of the adverse party prior to the trial. This in general has been the policy thus far followed in conducting the pre-trial calendar in this county.

While the advantage of settlement of cases has always been recognized, there has never been any attempt to force compromise settlements. The court, however, has attempted to assist wherever possible in bringing about settlements. The result in this regard has been somewhat disappointing. Comparatively few compromise settlements were effected at or as a direct result of the pre-trial hearing. However, the mere fact that the attorneys meet at the pre-trial hearing prior to the actual trial of the case makes possible the opening of negotiations looking to settlement and it has frequently happened that after leaving the pre-trial calendar department attorneys have started discussions which later resulted in an amicable adjustment of the action.

In conclusion, permit me to observe that the trial of pre-trial calendar system in this county has convinced me that the procedure is here to stay and that some form of the pre-trial calendar idea might well be adopted in every county of the state.

# 1938 BAR COMMITTEES

PRESIDENT BELCHER has made appointments to the various regular and special committees of the Los Angeles Bar Association for 1938, as follows:

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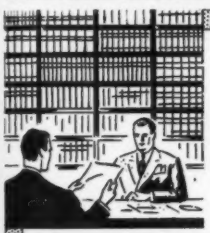

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**1938—1939**
**February 25, 1938**
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Paul Nourse
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James Ingebretsen (Junior Section)
Ford W. Harris, Jr. (Junior Section)
William R. James (Junior Section)
Prentiss Moore (Junior Section)
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Jerold Weil
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Edward Winterer
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Stanley Jewell (Junior Section)

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Charles Beardsley
Dwight Stephenson
Kenneth N. Chantry
Sayre Macneil
John M. Hall
Thomas C. Ridgway
Alex Davis
Philbrick McCoy
Randolph Karr
Jack Hardy

# LEGAL ETHICS COMMITEE'S OPINION CONDEMNS RADIO BROADCASTS

IN a recent opinion the Legal Ethics Committee of the Los Angeles Bar Association submitted to the Board of Trustees its Opinion No. 166, holding that it is improper professional conduct for a former judge or an attorney to participate in or permit the use of his name on a commercially sponsored radio program purporting to give legal advice, directly to persons appearing and presenting their "cases," and indirectly to the public in general.

The opinion follows:

**OPINION NO. 166.**

**Judicial Ethics—Radio Broadcasts.**—The participation by a judge, or the use of his name in a commercially sponsored radio program purporting to be for the benefit of the public through the giving of legal advice to indigent persons is contrary to the standards of behavior prescribed by the Canons of Judicial Ethics.

**Professional Ethics—Duties of Attorneys.**—It is improper for a former judge or an attorney to participate in, or permit the use of his name in a commercially sponsored radio program purporting to be for the benefit of the public through the giving of legal advice by a judge to indigent persons.

Our attention has been directed recently to the radio program sponsored by a national advertiser, broadcast weekly over the national network of a large broadcasting company, entitled "Good Will Court". The announced purpose of the "Good Will Court" is to afford to indigent persons, unable to pay for the services of attorneys, means of securing advice with respect to their legal problems from judges of courts which are an integral part of the judicial system of the state, and to "inform the public." The obvious purpose is to promote the sales of the advertiser's product. Other programs of like nature are broadcast by individual radio stations elsewhere in the country.

The essential features of these programs are the appearance of the anonymous "clients," the assistance of an interlocutor who may or may not be an attorney, the stating of their "cases" to the judge, whose name is always prominently mentioned, and finally the advice and comments of the judge. In an hour's program ten or more "cases" may be thus disposed of, the proceedings being interspersed with the usual station announcements, reference to the name of the sponsoring advertiser and to the product which he sells. In many instances there is a proffer of further advice or assistance to the "clients." Quite often the programs are marked by discussions between the judge and the interlocutor, both as to the facts and the law, and by emotional outbursts of the "clients." The case is conducted so as to create the impression that usual court procedure is being followed, but the simulation is poor indeed and tends to create false impressions in the minds of the lay public respecting court procedure.

We are asked to state our views as to the propriety of the participation therein by judges, former judges, and attorneys.

The Committee's opinion was stated by Mr. McCoy, Messrs. McCracken, Sutherland, Phillips, Arant, Bane and Houghton concurring.

At the outset we deprecate the simulation of an actual judicial proceeding by a group of lawyers or judges, and especially one having for its primary purpose the advertising of an article of commerce. It is an affront to the dignity of judicial tribunals and should not be tolerated. It is the unqualified opinion of this Committee that no judge or former judge, nor any other member of the bar, should participate in any such commercial program. "Patience and gravity of hearing is an essential part of justice; and an overspeaking judge is no well-tuned cymbal." Another vice of such programs is the tendency to give to the public a distorted idea of the way in which judicial proceedings should be conducted and of the judicial function.

While the question here presented is of paramount importance, the answer is plain. The most important character in these programs is the judge. The judicial office circumscribes the personal conduct of the judge. Canon 1, Canons of Judicial Ethics. The personal behavior of the judge, "not only upon the Bench and in the performance of his judicial duties, but also in his every-day life, should be above reproach," and he should not use "the influence of his name to promote the business of others." Canons 4, 25 and 34. The American Bar Association adopted these Canons in 1924, as a proper guide and reminder for judges, "and as indicating what the people have a right to expect from them."

The judge who participates in, or lends his name to, radio programs such as we are here considering obviously violates these Canons.

Moreover, the commercial character of the program, the absence of any opportunity to hear the other side of the case, and the patent exploitation of the intimate and distressing problems of the anonymous "clients," can only be viewed as an effort "to change what should be the most serious of human institutions either into an enterprise for the entertainment of the public or one of promoting publicity for the judge." Opinion 67. Because of the divergence in the laws of the several states, the advice given by the judge is apt to be misleading to listeners in states other than in the state of origin.

These objections are no less real although the proceedings are not conducted in open court, since the "clients" and those who listen to these programs may think they are getting advice of a duly constituted court. In fact, authentic information has come to the Committee that such has been the result. Obviously, the "clients" have no recourse when they have been wrongly advised. The whole affair is manifestly prejudicial to the due administration of justice. The fact that the judge gives the money he receives for his part in the performance to some worthy charity, does not condone the improper practice.

In a large measure, the same injurious results follow even though the role of the court in such programs is assumed by one who is a former judge or an attorney. We are therefore of the opinion that it is not proper for an attorney or former judge to participate in such radio programs, nor permit the use of his name. The part he takes is calculated to lower the esteem of the profession, and to stir up legal strife, and may be considered a subtle method of seeking employment. Opinion 121. Our present economic structure justifies the maintenance by the organized bar of the modern legal aid clinic to aid the individual lawyer in the discharge of his obligations, but cannot justify its alleged counterpart in the commercial field of radio entertainment.

We refrain from expressing any opinion on the question of whether these programs involve the unlawful practice of the law. That question is not within the jurisdiction of this Committee.

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The court said:

> "It will be seen by authority to be cited that if the Chief of Police were authorized by any legislative or judicial fiat to proceed to action under this plan, in contemplation of law, his action thereunder would be the action of the State. We have seen, however, that the police action outside of the city boundaries is *ultra vires* and is unsupported by any legislative or judicial fiat and it therefore follows that neither the state nor its agent is the defendant actually or colorably. The Fourteenth Amendment therefore does not afford complainant a forum for his suit in Federal court. . . . It is perhaps not out of place to say that the great depression, now passing, has wrecked the economic security of many, and this condition being made unendurable by the severity of weather in states easterly of the Pacific Coast states, has thrown many persons, both worthy and unworthy, into the equable climate of California. Many of such persons are without competence, and many are physically incapacitated from supporting themselves if employment were obtainable. These facts unjustly add to the tax burden and the crime problem in the City of Los Angeles and have for such reasons justified the Chief of Police in his own mind, and he is not unsupported by many citizens, in the execution of the preventive plan here outlined."

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# SYMPOSIUM ON UNAUTHORIZED PRACTICE

The current issue of *Law and Contemporary Problems*, the quarterly of the Duke University School of Law, Durham, North Carolina, is devoted in its entirety to a symposium on Unauthorized Practice of Law. In 14 articles and 174 pages the various angles of the problem are considered and the viewpoints of both the bar and lay groups are presented. The contributors include Stanley B. Houck, chairman of the committee of the American Bar Association on Unauthorized Practice of Law, and other nationally known bar leaders in this field, including Boyle G. Clark of Missouri, and J. G. Jackson and E. M. Otterbourg of New York City. E. H. Lothian of the National Association of Credit Men, and H. U. Nelson, Executive Vice-President of the National Association of Real Estate Boards, are among the lay contributors. The issue may be obtained for seventy-five cents by writing to the periodical.

An article in the symposium by Professor Karl N. Llewellyn attacks the unauthorized practice of law problem from an economic angle. Professor Llewellyn's suggested remedies for the plight of the bar would be much more drastic in their effect than the remedies against unauthorized practice of law which have been availed of thus far. It is his conclusion that the bar cannot meet the competition of lay agencies unless it modernizes and systematizes the way in which it gives its services. Included in his article are suggestions for the establishment of legal clinics for persons who can pay small legal fees but who do not want to accept charity, and for an advertising campaign carried on for the benefit of the bar as a whole.

In addition to several articles which present mainly the factual bases for the contentions of the bar and the automobile clubs, collection agencies, realtors, and other lay groups, some of the articles deal entirely with analyses of the court decisions that have been handed down in this field. The concluding article in the symposium is an extended study of the court procedures that have been used to punish or suppress unauthorized practitioners.

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**Louisiana:** Effective January 1, 1938, a rule was issued by the United States Referee in Bankruptcy for the Eastern District of Louisiana, requiring that all claims filed must be accompanied by an affidavit, that the same were not solicited either directly or indirectly.

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**Federal:** One Robert J. Willis, Jr., a layman was adjudged guilty of contempt of court by the Judge of the United States District Court, and sentenced to thirty days in the Federal Detention Home at Milan.

Willis was found to have appeared before a United States Commissioner on behalf of a party charged with a criminal offense.

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